



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      MNDCT FFT

### **Introduction**

This hearing dealt with the tenants' application pursuant to section 67 of the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord was represented by their agent KN ("landlord") in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing. In accordance with section 89 of the *Act*, I find that the landlords were duly served with the tenants' application. As the tenants confirmed receipt of the landlord's evidentiary materials, I find that the tenants were duly served with the landlord's evidence.

### **Preliminary Issue – Tenant's Evidence**

The tenants submitted evidence as part of their application, but the landlord testified that they have not received the tenant's evidence package.

Rule 3.14 of the RTB's Rules of Procedure establishes that a respondent must receive evidence from the applicant not less than 14 days before the hearing. The definition section of the Rules contains the following definition:

In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days weeks, months or years, the first and last days must be excluded.

As the landlord disputes receipt of the tenants' evidentiary materials, and as there is insufficient evidence to support that these materials were served upon the landlords in accordance with Rule 3.14 as stated above, I exercise my discretion to exclude the tenants' written evidence for the purposes of this hearing.

### **Issues(s) to be Decided**

Are the tenants entitled to a monetary award for the landlord's failure to use the rental unit for the purpose stated in the notice to end tenancy (i.e., landlord's use of property)?

Are the tenants entitled to recover the filing fee for this application?

### **Background and Evidence**

Both parties were unable to recall or confirm when this tenancy began, but the landlords took over the tenancy when they purchased the property.

It was undisputed by both parties that the tenants moved out on October 15, 2018 as per the 2 Month Notice issued to them by the landlord dated August 17, 2018. The effective date of the 2 Month Notice was October 31, 2018. The landlord stated on the 2 Month Notice the following reason for ending the tenancy: "the rental unit will be occupied by the landlord or the landlord's spouse or close family member (father, mother, or child) of the landlord or the landlord's spouse".

The tenants are seeking compensation as they feel that the landlords have failed to comply with the *Act*. The tenants testified that after moving out the unit remained empty. The tenants testified that they had confirmed this by talking to the landlords in January of 2019. They observed the rental unit to be empty when they attended the residence to pick up their mail from the upstairs tenant. The tenants testified that they could see through the screen door that the rental unit was empty.

The landlord testified that there was a delay in the move due to medical issues, but the landlord's mother did move into the rental unit at the beginning of January 2019. The landlord testified that the mother had suffered a stroke shortly after the 2 Month Notice was served, on August 26, 2018. The landlord provided a doctor's note confirming the delay due to medical issues, as well as a utility bill to support the occupancy.

### **Analysis**

Section 51(2) of the Act reads in part as follows:

*51(2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if*

*(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or*

*(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.*

*(3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from*

*(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or*

*(b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.*

I have considered the testimony and evidence of both parties, and I find that the landlord provided sufficient evidence to support that they have been compliant with section 49(3) of the Act. The landlord provided detailed evidence to show that they had ended the tenancy for the stated purpose on the 2 Month Notice, and although there was a delay in the move, the landlord has followed through with their intentions as required by the Act. I am satisfied that the landlord had provided sufficient evidence to support that the delay was due to circumstances beyond their control and that could not be anticipated at the time the 2 Month Notice was served to the tenants, and that they had fulfilled their obligations within a reasonable amount of time after the tenancy had ended.

Accordingly, I dismiss the tenants' application for monetary compensation as I find that the landlord has complied with the *Act*.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the tenants were not successful with their application, they must bear the cost of this filing fee.

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### **Conclusion**

The tenants' entire application is dismissed without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 14, 2019

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Residential Tenancy Branch